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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/818,383

03/27/2001

Ruth D. Kreichauf

1004.1136103

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7590

09/19/2006

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EXAMINER

WILSON, GREGORY A

ART UNIT

PAPER NUMBER

3749

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/818,383	Applicant(s) KREICHAUF, RUTH D.	
	Examiner Gregory A. Wilson	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 14, 2005 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26, 28 and 32-36 are rejected under 35 USC 103(a) as being obvious over Daroga, et al. (U.S. patent No. 4,631,872) in view of Trice (U.S. patent No. 3,251,159).

Daroga, et al. disclose a nuclear blast and fall out shelter, which can be made of different types of materials and in different shapes and sizes. See column 3, lines 9-13. The shelter includes oxygen cylinders 24, carbon dioxide absorbers 44, and sealing devices (valve 52 for sealing ventilation duct 51, air-tight door 16 and escape hatch 62). With respect to claim 28, Daroga, et al. also recognize that other types of oxygen generators could be employed such as those produced by electrolysis of water (see column 3, lines 1-8).

Although the Daroga, et al. shelter is an arrangement of interrelated parts attached together (see column 1, lines 65-68), it cannot be certain from the teachings of Daroga, et al. that such could broadly be considered a "kit" or group of interrelated parts as addressed in *In re Venezia*, 189 USPQ 149 (CCPA 1976). However, Applicant's attention is directed to the Trice reference (U.S. patent No. 3,251,159) which clearly

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teaches a need to manufacture a fall-out and bomb shelter "which is inexpensive to construct, which is precast and therefore eliminates the need for expensive casting operations on the spot and is made in segments which are simple to handle and assemble" (see column 1, lines 35-40).

Therefore, to manufacture the fall-out shelter of Daroga, et al. as a group of interrelated parts to be assembled on site would have been obvious in view of the teachings of Trice for the same advantages. In so doing, the Daroga, et al. shelter would be considered a "kit" and all of the parts would be "portable" to the site of installation.

As to the inclusion of "portable" in the claim language of claim 34, this in and of itself would not render the claim patentable since it is not regarded as inventive to merely make an old device portable or movable without producing any new and unexpected result. See *Ranco, Inc. v. Gwynn et al.*, 128 F.2d 437 [54 USPQ 3]. Likewise, as "removable" in the claim language of 36, it is an obvious matter of design choice to make anything removable, including the sealing device, if the same is desired. See *In re Dulberg*, 289 F.2d 522,523, 129 USPQ 348, 349 (CCPA 1961).

Claim 27 and 35 is rejected under 35 USC 103(a) as being obvious over Daroga, et al. and Trice for reasons stated in the rejection of claim 26 above, and further in view of Connor (U.S. patent No. 2,982,511).

Claim 27 calls for the sealing device to be an "inflatable gas bladder". Although the Daroga, et al. reference does not provide an explicit description of in-line valve 52, attention is directed to the Connor reference which discloses an inflatable in-line valve designed to be simple in construction and easy to install. See column 1, lines 20-25. To substitute an inflatable valve such as taught by Connor for valve 52 on Daroga, et al. would have been obvious in order to simplify the assembly of the overall "kit".

Claim 29 is rejected under 35 USC 103(a) as being obvious over Daroga, et al. in view of Trice for reasons stated in the rejection of claim 26 above, and further in view of Mayland, et al. (U.S. patent No. 3,485,743). The Mayland, et al. reference teaches an electrolytic oxygen generating/carbon dioxide absorbing system for use in a fallout shelter. See column 2, line 14. The unwanted hydrogen gas is vented away from the fallout shelter. See column 3, lines 4-6 and column 5, lines 55-59. As illustrated by Mayland, et al. in figure 2, the hydrogen gas is vented from compartment 10 via tubing, which is capable of being connected to any desired location such as an existing plumbing water trap of sink 65 or toilet 64.

To employ the system of Mayland, et al. as part of the "kit" of Daroga, et al. would have been obvious and would amount to mere selection of one well known oxygen generating/carbon dioxide absorbing system used in fall-out shelters for another, especially since Daroga, et al. recognizes that other systems could be selected.

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Claim 30 is rejected under 35 USC 103(a) as being obvious over Daroga, et al. in view of Trice for reasons stated in the rejection of claim 26 above, and further in view of Hoshiko (U.S. patent No. 4,508,700). The Hoshiko reference discloses a conventional oxygen generator that includes a solid material that generates gaseous oxygen when contacted with water. See column 1, lines 27-30.

To employ the system of Hoshiko as part of the kit of Daroga, et al. would have been obvious and would amount to mere selection of one well known oxygen generating system for another, especially since Daroga, et al. recognizes that other systems could be selected.

Claim 31 is rejected under 35 USC 103(a) as being obvious over Daroga, et al. in view of Trice for reasons stated in the rejection of claim 26 above, and further in view of Staub, Jr. et al. (U.S. Patent No. 3,593,711). The Staub, et al. reference discloses a conventional oxygen generating/carbon dioxide absorbing system wherein a chemical revitalizing compound serves as both an oxygen source and a carbon dioxide scrubber for uses in sealed chambers or rooms (see abstract).

To employ the system of Staub, et al. as part of the "kit" of Daroga, et al. would have been obvious and would amount to mere selection of one well known oxygen generating/carbon dioxide absorbing system for another, especially since Daroga et al. recognizes that other systems could be selected.

Claims 26, 28-31, 34 and 36 are rejected under 35 USC 103(a) as being obvious over Rudinger (U.S. patent No. 2,977,723) in view of Trice and further in view of Daroga, et al., Mayland, et al., Hoshiko or Staub, et al.

Although the Rudinger bombshelter is made of poured concrete (see column 2, lines 3-6), Applicant's attention is directed to the Trice reference (U.S. patent No. 3,251,159) which clearly teaches a need to manufacture a fall-out and bomb shelter "which is inexpensive to construct, which is precast and therefore eliminates the need for expensive casting operations on the spot and is made in segments which are simple to handle and assemble." See column 1, lines 35-40.

Therefore, to manufacture the fall-out shelter of Rudinger as a group of interrelated parts to be assembled on site would have been obvious in view of the teachings of Trice for the same advantages. In so doing, the Rudinger shelter would be considered a "kit" and all of the parts would be "portable" to the site of installation.

The Rudinger reference discloses a bombshelter having ventilation duct 32 "which may be cut out of operation by being closed by a steel door (not shown)". See column 3, lines 9 and 10. Such steel door meets the claim limitation of "at least one sealing device for sealing said room from any coupled ventilation duct".

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Although no equipment is shown within the bombshelter, the Rudinger reference does recognize that internal equipment must be provided such as an oxygen generator and a carbon dioxide filter. See column 2 and 3, the bridging paragraph.

To provide oxygen generating systems and carbon dioxide systems such as those disclosed by Daroga, et al., Mayland, et al., Hoshiko, or Staub, et al. together with the bombshelter of the Rudinger modified in view of the teachings of Trice as a "kit" would have been obvious in order to maintain the interior atmosphere at a safe level, especially since Rudinger already recognizes the necessity for such systems.

As to the inclusion of "portable" in the claim language of claim 34, this in and of itself would not render the claim patentable since it is not regarded as inventive to merely make an old device portable or movable without producing any new and unexpected result. See *Ranco, Inc. v. Gwynn et al.*, 128 F.2d 437 [54 USPQ 3]. Likewise, as "removable" in the claim language of 36, it is an obvious matter of design choice to make anything removable, including the sealing device, if the same is desired. See *In re Dulberg*, 289 F.2d 522,523, 129 USPQ 348, 349 (CCPA 1961).

Claims 27 and 35 are rejected under 35 U.S.C. 103(a) as being obvious over Rudinger, Trice, Daroga, et al., Mayland, et al., Hoshiko and Staub, et al. for reasons stated in the rejection of claim 26 above, and further in view of Pearman, et al. (U.S. patent No. 6,217,441).

The Rudinger bombshelter includes a steel door (not shown) to cut out operation of the ventilation duct 32. The Pearman, et al. reference discloses a sealing device in the form of an inflatable bladder for sealing off ventilation ducts in the event of a chemical or biological attack. To provide an inflatable sealing device as, for example, taught by Pearman, et al. with the Rudinger bombshelter in "kit" form would have been an obvious substitution of one well known sealing device for another within the bombshelter arts that would work equally well as the steel door.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned

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by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(I)(1) and § 706.02(I)(2).

Claims 27 and 35 are rejected under 35 USC 103(a) as being obvious over Rudinger, Trice, Daroga, et al., Mayland, et al., Hoshiko and Staub, et al. for reasons stated in the rejection of claim 26 above, and further in view of Long et al. (BIOTERRORISM SECRETS FOR SURVIVAL, Chapter 5, 1998). On page 48 of chapter 5, Long et al. teaches how to create a "sealed Room" or "Safe Room" in case of a terrorist biological attack. Long, et al. suggest using plastic sheets and duct tape to cover and seal any air leaks such as doors and windows. Although Rudinger already suggests closing off all ventilation openings, to employ plastic and duct tape to seal off any ventilation ducts such as filter 32 and doors 28 and 48 on the Rudinger bombshelter would have been obvious in view of the teachings of Long et al. in order to completely seal the interior chamber from any infiltration of biological agents.

Claims 26, 27 and 32-36 are rejected under 35 USC 103(a) as being obvious over Long, et al. in view of Michielson (U.S. patent No. 3,575,167). In chapter 5 of the Long, et al., BIOTERRORISM SECRETS FOR SURVIVAL), Long, et al. disclose a technique for contamination-proofing your home in case of a terrorist attack with biological weapons. On pages 43 and 53, Long, et al. suggests keeping a protective suit and mask on hand. On pages 46 – 48, Long, et al. suggests different ways to seal off a room in your home, one being to use "kits" of clear plastic with double-back tape (page 48, first paragraph) or plastic sheeting and duct tape (page 48, second paragraph). On page 49, Long, et al. recognizes that with a room completely sealed off, the amount of oxygen and carbon monoxide build-up would be a concern. Although Long, et al. doesn't further address how the interior atmosphere should be replenished, attention is directed to the Michielsen reference which discloses a breathing system for generating oxygen and absorbing carbon dioxide (see column 4, line 2 through column 5, line 20) to be stored in a home (see column 2, lines 7-10) and used for many diverse purposes (see column 2, lines 55-59) such as in toxic or radioactive contaminated atmosphere (see column 1, lines 72-74). To include this type of rebreathing apparatus with the "kit" of Long, et al. would have been obvious in order to breath inside the safe room should the oxygen supply diminish as well as to breath safely when the time comes to leave the shelter as recognized on page 53 of the Long, et al. reference. Likewise, as "removable" in the claim language of 36, it is an obvious matter of design choice to make anything removable, including the sealing device, if the same is desired. See *In re Dulberg*, 289 F.2d 522,523, 129 USPQ 348, 349 (CCPA 1961).

Claims 26, 31 and 32-36 are rejected under 35 USC 103(a) as being obvious over Long, et al. in view of Staub, et al. In chapter 5 of the Long et al., BIOTERRORISM SECRETS FOR SURVIVAL), Long, et al. disclose a technique for contamination-proofing your home in case of a terrorist attack with biological weapons. On pages 43

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and 53, Long, et al. suggests keeping a protective suit and mask on hand. On pages 46 – 48, Long et al. suggests different ways to seal off a room in your home, one being to use “kits” of clear plastic with double-back tape (page 48, first paragraph) or plastic sheeting and duct tape (page 48, second paragraph). On page 49, Long, et al. recognizes that with a room completely sealed off, the amount of oxygen and carbon monoxide build-up would be a concern. Although Long, et al. doesn’t further address how the interior atmosphere should be replenished, attention is directed to the Staub, et al. reference which discloses a carbon dioxide/oxygen generating system for use in a sealed chamber or room (see abstract). To include this type of system with the “kit” of Long, et al. would have been obvious in order to maintain the breathable atmosphere within the sealed room. Likewise, as “removable” in the claim language of 36, it is an obvious matter of design choice to make anything removable, including the sealing device, if the same is desired. See *In re Dulberg*, 289 F.2d 522,523, 129 USPQ 348, 349 (CCPA 1961).

Claims 37 and 38 are rejected under 35 USC 103(a) as being obvious over Daroga, et al. (U.S. patent No. 4,631,872) in view of Trice (U.S. patent No. 3,251,159) and Holmes (U.S. patent No. 4,320,756).

Daroga, et al. disclose a nuclear blast and fall out shelter, which can be made of different types of materials and in different shapes and sizes. See column 3, lines 9-13. The shelter includes oxygen cylinders 24, carbon dioxide absorbers 44, and sealing devices (valve 52 for sealing ventilation duct 51, air-tight door 16 and escape hatch 62). With respect to claim 28, Daroga, et al. also recognize that other types of oxygen generators could be employed such as those produced by electrolysis of water (see column 3, lines 1-8).

Although the Daroga, et al. shelter is an arrangement of interrelated parts attached together (see column 1, lines 65-68), it cannot be certain from the teachings of Daroga, et al. that such could broadly be considered a “kit” or group of interrelated parts as addressed in *In re Venezia*, 189 USPQ 149 (CCPA 1976). However, Applicant’s attention is directed to the Trice reference (U.S. patent No. 3,251,159) which clearly teaches a need to manufacture a fall-out and bomb shelter “which is inexpensive to construct, which is precast and therefore eliminates the need for expensive casting operations on the spot and is made in segments which are simple to handle and assemble” (see column 1, lines 35-40).

Therefore, to manufacture the fall-out shelter of Daroga, et al. as a group of interrelated parts to be assembled on site would have been obvious in view of the teachings of Trice for the same advantages. In so doing, the Daroga, et al. shelter would be considered a “kit” and all of the parts would be “portable” to the site of installation.

As to the inclusion of “portable” in the claim language of claim 34, this in and of itself would not render the claim patentable since it is not regarded as inventive to merely make an old device portable or movable without producing any new and unexpected result. See *Ranco, Inc. v. Gwynn et al.*, 128 F.2d 437 [54 USPQ 3]. Likewise, as

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"removable" in the claim language of 36, it is an obvious matter of design choice to make anything removable, including the sealing device, if the same is desired. See *In re Dulberg*, 289 F.2d 522,523, 129 USPQ 348, 349 (CCPA 1961).

As to the use of plumbing water traps, Holmes shows a breathing device 19 for communicating fresh air from air vent 15 to the respiratory intake of the user. The device has charcoal filtering means 23 (see column 2, lines 49-53, column 2, line 63 to column 4, line 23). Thus, for the generator to include a tube for insertion through an existing plumbing water trap would be obvious in view of the above teaching in Holmes, in order to provide fresh air.

Claims 26, 28-31, 34 and 36 are rejected under 35 USC 103(a) as being obvious over Rudinger (U.S. patent No. 2,977,723) in view of Trice and further in view of Daroga, et al., Mayland, et al., Hoshiko or Staub, et al. and Holmes.

Although the Rudinger bombshelter is made of poured concrete (see column 2, lines 3-6), Applicant's attention is directed to the Trice reference (U.S. patent No. 3,251,159) which clearly teaches a need to manufacture a fall-out and bomb shelter "which is inexpensive to construct, which is precast and therefore eliminates the need for expensive casting operations on the spot and is made in segments which are simple to handle and assemble." See column 1, lines 35-40.

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As to the use of plumbing water traps, Holmes shows a breathing device 19 for communicating fresh air from air vent 15 to the respiratory intake of the user. The device has charcoal filtering means 23 (see column 2, lines 49-53, column 2, line 63 to column 4, line 23). Thus, for the generator to include a tube for insertion through an existing plumbing water trap would be obvious in view of the above teaching in Holmes, in order to provide fresh air.

Claims 26, 27 and 32-36 are rejected under 35 USC 103(a) as being obvious over Long, et al. in view of Michielson (U.S. patent No. 3,575,167) and Holmes. In chapter 5 of the Long, et al., BIOTERRORISM SECRETS FOR SURVIVAL), Long, et al. disclose a technique for contamination-proofing your home in case of a terrorist attack with biological weapons. On pages 43 and 53, Long, et al. suggests keeping a protective suit and mask on hand. On pages 46 – 48, Long, et al. suggests different ways to seal off a room in your home, one being to use “kits” of clear plastic with double-back tape (page 48, first paragraph) or plastic sheeting and duct tape (page 48, second paragraph). On page 49, Long, et al. recognizes that with a room completely sealed off, the amount of oxygen and carbon monoxide build-up would be a concern. Although Long, et al. doesn't further address how the interior atmosphere should be replenished, attention is directed to the Michielson reference which discloses a breathing system for generating oxygen and absorbing carbon dioxide (see column 4, line 2 through column 5, line 20) to be stored in a home (see column 2, lines 7-10) and used for many diverse purposes (see column 2, lines 55-59) such as in toxic or radioactive contaminated atmosphere (see column 1, lines 72-74). To include this type of rebreathing apparatus with the “kit” of Long, et al. would have been obvious in order to breath inside the safe room should the oxygen supply diminish as well as to breath safely when the time comes to leave the shelter as recognized on page 53 of the Long, et al. reference. Likewise, as “removable” in the claim language of 36, it is an obvious matter of design choice to make anything removable, including the sealing device, if the same is desired. See *In re Dulberg*, 289 F.2d 522,523, 129 USPQ 348, 349 (CCPA 1961).

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Claims 26, 31 and 32-36 are rejected under 35 USC 103(a) as being obvious over Long, et al. in view of Staub, et al. and Holmes. In chapter 5 of the Long et al., BIOTERRORISM SECRETS FOR SURVIVAL), Long, et al. disclose a technique for contamination-proofing your home in case of a terrorist attack with biological weapons.

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On pages 43 and 53, Long, et al. suggests keeping a protective suit and mask on hand. On pages 46 – 48, Long et al. suggests different ways to seal off a room in your home, one being to use “kits” of clear plastic with double-back tape (page 48, first paragraph) or plastic sheeting and duct tape (page 48, second paragraph). On page 49, Long, et al. recognizes that with a room completely sealed off, the amount of oxygen and carbon monoxide build-up would be a concern. Although Long, et al. doesn’t further address how the interior atmosphere should be replenished, attention is directed to the Staub, et al. reference which discloses a carbon dioxide/oxygen generating system for use in a sealed chamber or room (see abstract). To include this type of system with the “kit” of Long, et al. would have been obvious in order to maintain the breathable atmosphere within the sealed room. Likewise, as “removable” in the claim language of 36, it is an obvious matter of design choice to make anything removable, including the sealing device, if the same is desired. See *In re Dulberg*, 289 F.2d 522,523, 129 USPQ 348, 349 (CCPA 1961).

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Response to Arguments

Applicant's arguments filed 10/14/05 and 2/7/06 have been fully considered but they are not persuasive. The applicant has amended the claims to recite that: a kit for providing a breathable room atmosphere, not comprises a packaged set of objects. Applicant is very vague in his description of a kit and does not disclose that the components are designed to be packaged as a singular unit (SEE page 6 of the specification). In fact, the applicant discloses a collection of individual components, but supplies no teaching on packaging these components together to constitute a single unit (ie: a kit) or a “packaged” set of objects. The examiner contends that the specification does not particularly support this limitation in a manner which is non-obvious over the prior art. In response to the applicants arguments that the applicant

has not merely made a prior art kit "portable" as the Examiner appears to be asserting. Rather, the instant claims define a kit containing portable components, the examiner hereby upholds previously presented rejection. The prior art of Daroga, et al in view of Trice reads on the collection of components as set forth by the applicant and thereby will constitute a "kit". The collection of components as taught by the prior art combination of Daroga, et al in view of Trice have components capable of being moved from one location to another, since the prior art combination read on the applicants disclosed "kit", the fact that the components can be relocated, meet the portability limitation. Applicants arguments that the prior art constitute a bomb shelter does not diminish the fact that the structure is capable of being relocated along with its' components even if its not its intent and additionally, the applicant argues that one of ordinary skill in the art would not consider the shelter of Daroga, et al as part of a kit, but has claimed a "room" in combination with the kit, wherein a room is tied into the invention in a similar way in which the shelter of the prior art is used in the rejection of Daroga, et al in view of Trice. Additionally the applicant argues that there is no motivation to combine the teachings of Daroga and Trice, but the examiner respectfully disagrees. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both Daroga and Trice present inventions relating to a shelter as a safe haven for human inhabitants against harmful agent attack such as chemical or biological weapon attack (ie: they are related arts). In response to applicants arguments that the elements are not 'portable' as one of ordinary skill in the art would understand the term, the examiner respectfully disagrees. Daroga et al teaches the elements of an oxygen cylinder (24), carbon dioxide absorber (44) etc., these are all portable elements and together, a person having ordinary skill in the art would recognize them as constituting a kit.

In response to applicant argument that there is no motivation to make the air intake valve portable since Daroga is buried underground, the examiner respectfully disagrees. The fact remains that the air intake valve (52) is capable of being moved from one location to another as it pertains to the structure (the shelter), the manner in which the structure is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitation, in this case portability of the air intake valve.

In response to applicants arguments that the air-tight door and escape hatch of Daroga do not appear to seal the room for a ventilation duct has been considered but are not persuasive. Daroga does in fact teach a sealing structure which will inherently seal the room from any coupled ventilation duct, providing there is a ventilation duct, however a specific ventilation duct has not been claimed so as per the applicants invention, if it were desired to have a duct attached to the room, the sealing structure is in place to perform the function of the applicants claimed sealing.

In response to applicants arguments as it pertains for claim 35, that the kit includes portable sealing devices selected from a group consisting of inflatable gas bladders, polymeric foam generators, cured foam blocks, and sealing tape and that neither Daroga or Trice teach this, the examiner does not find this argument persuasive, since it is for this reason that Connor (2,982,511) was introduced (SEE prior rejection as it pertains to claim 35).

In response to applicants argument that there is no motivation for one of ordinary skill in the art to put the pressure-controlled valve of Connor in the fallout shelter of Daroga and that the pressure-valve of Connor does not appear to be portable the examiner respectfully disagrees. Connor teaches a valve, while not intended to, is structurally capable of operating in a manner required by the applicants invention, additionally, Figures 1, 2, and 4 of Connor, shows the valve as a type of sleeve between two pipes and the fact that it is disclosed as being easy to install reads on the portability limitation and additionally, the examiner has found no disclosure of the valve of Connor being intended for permanent installation.

In response to applicants arguments as it pertains to claim 29 and the previous rejection made in reference to Mayland, the examiner disagrees, the applicant has not defined any specific structure to link the exhaust tube to an existing plumbing water trap and therefore the prior art only needs to indicate structure capable of performing the applicants claimed invention and in this case, Mayland teaches in Figure 2 and in column 3, additional means for collecting and venting various gases from the chamber

and is not limited by its location, hence, to be inserted through an existing plumbing water tap is within the level of ordinary skill in the art.

In response to applicants arguments that Rudinger does not appear to teach or suggest a portable sealing device for sealing the shelter from any coupled ventilation ducts and additionally that the examiner is construing the term "portable" as meaning anything capable of being moved to a location where it is permanently installed and not movable thereafter, the Examiner respectfully disagrees and directs applicants attention to previous office action wherein Rudinger is considered in view of Trice and further in view of Daroga, et al, Mayland et al, Hoshiko, or Staub et al, where the examiner maintains that to manufacture the fall-out shelter of Rudinger as a group of interrelated parts to be assembled on site would have been obvious in view of Trice and by doing so, it can be considered a kit in which was portable to location of installation. Applicant submits that the term "portable" would be understood by one of ordinary skill in the art as not including a component that is moved once and then permanently installed, but discloses an invention and supporting specification which teaches such, since it is claimed in combination with the room in a similar way in which some of the components are taught in combination with the "bomb-shelter" structure.

In response to applicants arguments as it pertains to Pearman, that one of ordinary skill in the art would not be motivated to substitute the inflatable bladder of Pearman for the steel door of Rudinger because they do not provide the same level protection, the examiner respectfully disagrees and contends that the level of protection is not what is at stake, ie: its intended use. The applicants response is not persuasive

since it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

In response to applicants arguments as it pertains to the rejections made by Long et al. in view of Michielson and Staub et al that there is no motivation for including the apparatus of Michielson or Staub et al, the examiner respectfully disagrees. Since Michielson teaches a breathing system for generating oxygen and absorbing carbon dioxide which can substitute for the configuration of Long et al and likewise with Staub, et al which discloses a carbon dioxide/oxygen generating system for use with a sealed room or chamber (as per Long, et al) and can substitute for the configuration of Long et al namely the vacuum cleaner with a HEPA filter to provide clean filtered air and create a positive pressure to the sealed room, the motivation is that these references are related art in that they pertain to providing clean breathable air to an environment which is potentially protected from a hazardous environment. Long et al would be deficient in that it has the purpose of filling the room with what would be potentially hazardous air.

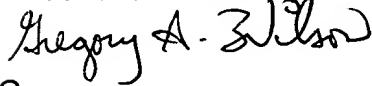
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory A. Wilson whose telephone number is (571)272-4882. The examiner can normally be reached on 7 am - 4:30 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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GREGORY WILSON
PRIMARY EXAMINER



Gaw

August 28, 2006